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09/751,191	12/29/2000	Jean-Pierre Giraud	5094.035	8524

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EXAMINER

BUTLER, MICHAEL E

ART UNIT

PAPER NUMBER

3653

DATE MAILED: 12/13/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

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## Office Action Summary

	Application No. 09/751,191	Applicant(s) Giruad
	Examiner Michael E. Butler	Art Unit 3653

— The MAILING DATE of this communication appears on the cover sheet with the correspondence address —

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1)  Responsive to communication(s) filed on Aug 9, 2002
- 2a)  This action is FINAL.      2b)  This action is non-final.
- 3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle* 1035 C.D. 11; 453 O.G. 213.
- 4)  Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5)  Claim(s) \_\_\_\_\_ is/are allowed.
- 6)  Claim(s) 1-13 is/are rejected.
- 7)  Claim(s) \_\_\_\_\_ is/are objected to.
- 8)  Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9)  The specification is objected to by the Examiner.
- 10)  The drawing(s) filed on \_\_\_\_\_ is/are a)  accepted or b)  objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11)  The proposed drawing correction filed on \_\_\_\_\_ is: a)  approved b)  disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12)  The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13)  Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)  All b)  Some\* c)  None of:

1.  Certified copies of the priority documents have been received.
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\*See the attached detailed Office action for a list of the certified copies not received.

- 14)  Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).  
a)  The translation of the foreign language provisional application has been received.
- 15)  Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                   | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)          | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ | 6) <input type="checkbox"/> Other: _____                                    |

**DETAILED ACTION*****Election/Restriction***

1. Applicant's election of invention I without traverse in Paper No. 5 of the restriction requirement is acknowledged and made final.

***Drawings***

2. New drawings will be required contingent upon allowance because the drawings were objected to by the draftsman/declared informal by the applicant.

***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 4-5, and 7-12 are rejected under 35 U. S. C. 112 second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

There is insufficient antecedent basis in the claims for the following term(s): (cl 8) the apertures, (cl 9) the vial bottom, (cl 11) the cassette, the vial, the vial sidewall, the aperture, (cl 12) the carrier.

Applicant has placed (cl4) a limitation of the lift is positioned within the cassette and at least a portion of the lift is situated within the cassette. Consider moving the narrower scope variant of this element to a dependent claim as a way of removing the ambiguity caused by the inclusion of conflicting scope limitations within the same claim.

Art Unit: 3653

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

- (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.
- (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States
- (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

6. Claim 1 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Kaehler which discloses:

(Re: cl 1) Meter strip dispenser:  
housing 20  
container within housing between 34/36  
movable body engaging test strip to displace strip from container 81  
body connected to actuator 80  
movable mechanism drives body into engagement c3 L 34-46  
(re: cl 13) desiccant plastic (c3 L 34-46).

7. Claims 1-2, 6, and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Eikmeier et al. which discloses:

(Re: cl 1) Meter strip (6) dispenser:  
housing (2)  
container within housing (20; c2 L 42-51)  
movable body engaging test strip to displace strip from container  
body connected to actuator (4)  
movable mechanism drives body into engagement  
(re: cl 2) cassette within a vial (c2 L 42-51)  
(re: cl 13) desiccant plastic (c1 L 12-24)  
(re: cl 6) lever with one end at actuator and other end at movable body (11).

8. Claims 1,2,10-11 are rejected under 35 U.S.C. 102(b) as being anticipated by Wilson which discloses:

Art Unit: 3653

(Re: cl 1) Meter strip dispenser:  
housing 1  
container within housing 4  
movable body engaging test strip to displace strip from container 3  
body connected to actuator  
movable mechanism drives body into engagement  
(re: cl 2) cassette within a vial 4  
(re: cl 11) cassette enclosed within vial 4 EL2  
vial has a movable lip seal 9 located in the same plane as the aperture fig 3  
lip seal being provided on vial sidewall 9  
openable in response to a force applied from inside the vial when a test strip is moved against the seal  
(re: cl 12) lip seal formed by blending thermoplastic material used in forming vial C3 L 19.

***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 1-5, 11-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kaehler in view of Ko et al. Kaehler discloses the elements previously discussed as well as a lift 46 with biasing element 44 over vertical member; cover lip seal 74 of formed thermoplastic c1 L 38-42.

Ko et al. discloses:

A dispensing cassette for flat strips with an open bottom (12 fig 1); vertical slot in cassette (slots formed between the four descending legs).

Art Unit: 3653

It would have been obvious at the time of the invention to drop a cassette with open bottom with slots serving as access for the lift as seen in Ko et al. to facilitate cassette reloading and to receive an upward biasing lift as Kaehler has.

11. Claims 1-2,, 4-8, and 11-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eikemeier et al. in view of Kintzig. Eikemeier et al. discloses the elements previously discussed and further discloses:

(re: cl 11) cassette enclosed within vial (c2 L 42-51)  
lip seal being provided on vial sidewall openable in response to a force applied from inside the vial when a test strip is moved against the seal ( )  
(re: cl 12) lip seal formed by blending thermoplastic material used in forming vial c3 L 1-6).

Kintzig discloses:

a vertical slot (grooves3,6 )  
vial has a movable lip seal located in the same plane as the aperture (12)  
lift apparatus in cassette 7 with biasing element 15

It would have been obvious at the time of the invention to modify the Eikemeire et al. with a lip seal to protect contents against contamination or moisture as taught by Kintzig and thereby come up with the instant invention. It would have been obvious at the time of the invention to insert the cassette of Kintzig in Eikemeire et al. to single feed test strips and thereby come up with the instant invention.

12. Claims 1-2, 6 and 11-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eikemeier et al. in view of Sacherer et al. Eikemeier et al. discloses the elements previously discussed.

Sacherer et al. discloses :

vial has a movable lip seal located in the same plane as the aperture (fig. 1)

Art Unit: 3653

It would have been obvious at the time of the invention to modify the Eikemeire et al. with a lip seal to protect contents against contamination or moisture as taught by Kintzig and thereby come up with the instant invention.

13. Claims 1-8 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eikemeier et al. in view of Blanding et al. Eikemeier et al. discloses the elements previously discussed with Blanding et al. disclosing a dispensing mechanism with cartridge for test slide strip:

- a cassette with an open bottom 36/34 fig 4
- a lift biasing element 90 fig 3
- a lift 75 over vertical element 68
- lift extending into cassette fig 4

It would have been obvious at the time of the invention for Eikmeier et al. to use an open bottom cassette to single feed strips with minimize cartridge hardware as taught by Blanding et al.

Art Unit: 3653

***Conclusion***

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.
15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Exmr. Michael E. Butler whose telephone number is (703) 308-8344.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Donald Walsh, can be reached on (703) 306-4173. The fax number for the Group is (703) 305-7687.



Michael E. Butler  
Examiner



DONALD F. WALSH  
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